

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  U S WEST COMMUNICATIONS, INC., n/k/a QWEST CORPORATION	DOCKET NOS. INU-00-2 SPU-00-11
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**RECONSIDERATION OF CONDITIONAL STATEMENT REGARDING  
CHECKLIST ITEM 14: RESALE**

(Issued May 28, 2002)

On February 10, 2000, the Utilities Board (Board) issued an order initiating an investigation relating to the possible future entry of U S WEST Communications, Inc., n/k/a Qwest Corporation (Qwest), into the interLATA market. The investigation was identified as Docket No. INU-00-2.

In a filing dated May 4, 2000, Qwest encouraged the Board to consider a multi-state process for purposes of its review of Track A (competition issues),<sup>1</sup> various aspects of each item on the 14-point competitive checklist, section 272 (separate subsidiary) issues and public interest considerations. The Board considered the concept of a multi-state process for purposes of its review of a Qwest application to provide in-region, interLATA services, sought comment, and subsequently issued an order dated August 10, 2000, indicating that its initial review of Qwest's compliance with the requirements of 47 U.S.C. § 271 would be through participation in a multi-state workshop process with the Idaho Public Utilities

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<sup>1</sup> See, 47 U.S.C. § 271(c)(1)(A).

Commission, North Dakota Public Service Commission, Montana Public Service Commission, Wyoming Public Service Commission, and the Utah Public Service Commission. Since the time of that order, the New Mexico Public Regulation Commission has also joined in the workshop process.

On October 12, 2001, the Board issued its conditional statement regarding the May 15, 2001, report filed by The Liberty Consulting Group (Liberty) and addressed the multistate collaborative review of Qwest Corporation's (Qwest) compliance with checklist items 1, 11, 13, and 14. Checklist item 14 pertains to resale services.

In a "Letter in Lieu of Exceptions," filed November 7, 2001, the Association of Communication Enterprises (ASCENT) expressed disappointment with the Board's conditional approval regarding Checklist Item 14. The Board first notes that ASCENT (as it is now known) has not filed a request to participate in these proceedings. However, a petition to intervene was filed on February 18, 2000, on behalf of the Telecommunications Resellers Associations (TRA) and was granted by the Board. Sometime after that request for participation in this docket, it is the Board's understanding that TRA changed its name to ASCENT.

ASCENT argued that the Board's provisional finding disregarded FCC pronouncements that an RBOC must demonstrate compliance with the *ASCENT Decision*<sup>2</sup> as part of its application for interLATA market entry. The Board's finding relates specifically to the collaborative workshops conducted prior to the release in

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<sup>2</sup> *Association of Communications Enterprises v. FCC*, 235 F.3d 662, 663 (D.C. Cir.), *aff'd*, -- F.3d --, No. 00-1144 (D.C. Cir. June 26, 2001).

January 2001 of the *ASCENT Decision*, and the June 26, 2001, order on petition for review. It does not address critically related resale compliance issues which are outside the realm of Qwest's SGAT, such as advanced services resale.

ASCENT contended that the availability of interconnection, network elements, or services only demonstrates potential. Documented and measured performance demonstrates "actualized" potential. To the extent that the statement fails to consider resale issues outside of Qwest's SGAT, including advanced services resale, the statement is incomplete at best, and inaccurate at worst. ASCENT asked the Board to require Qwest to demonstrate that it provides advanced services resale before it renders a final determination of Qwest's compliance.

On November 16, 2001, Qwest filed a response that included an affidavit of Lori A. Simpson. Ms. Simpson originally provided written and oral testimony on Checklist Item 14 in the multistate 271 proceedings prior to Liberty's May 15, 2001, Report. In the affidavit, Ms. Simpson notes that all telecommunications services that are provided to end user customers who are not carriers are available for resale by CLECs. These services include frame relay service, Qwest DSL service, DS1 and DS3 service, and any other 'advanced' telecommunications services that Qwest offers to its retail end users. This offering is provided under SGAT section 6.1.1.

The affidavit also indicated that Qwest does not just offer these advanced resale services, Qwest actually provides them. Qwest was currently providing more than 260 resold Qwest DSL services to CLECs in its 14 states, including five resold

Qwest DSL services to CLECs in Iowa, at the time of the affidavit. Additionally, Qwest was currently providing 1,886 resold DS1 services and six resold DS3 services to CLECs in the 14 states. Qwest tracks how well it is providing and maintaining the resold services through its negotiated ROC performance metrics. Performance metrics individually track provisioning and repair data concerning the resold advanced services. Data shows that Qwest provisions these services to CLECs at parity to its provision of comparable services to its retail customers.

The Board notes the May 15, 2001, report addressed 32 resale issues that had been resolved during the workshops, and Liberty proposed resolutions for 11 unresolved resale issues. Workshop participants were given ten days to file comments or objections to Liberty's report. Nothing was filed and the Board subsequently issued its conditional statement.

On July 24, 2001, ASCENT filed a brief, prior to Liberty issuing its Public Interest Report. ASCENT stated that approval of Qwest's 271 application would not be in the public interest unless Qwest were to demonstrate that it provides "advanced services on a resale basis, both currently and on a going-forward basis."<sup>3</sup> Liberty's Public Interest Report noted this concern but indicated it had been previously addressed.<sup>4</sup>

The ASCENT position stems from a January 2001, United States Court of Appeals (D.C. Circuit) decision that data affiliates of incumbent LECs are subject to

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<sup>3</sup> Comments of ASCENT re: Qwest's Compliance with Public Interest Requirements, pp. 18-19.

<sup>4</sup> Public Interest Report, filed 10/22/01, p. 12.

all resale obligations required by section 251(c) of the Act. Prior to this decision, 271 applicants could avoid reselling advanced services by providing the services exclusively through an affiliate that was not subject to section 251(c) resale obligations. As of last summer, the FCC began requiring 271 applicants to allow competitive LECs to resell DSL service over lines on which the competitive LECs resell voice service - even though the DSL service is provided exclusively by an advanced services affiliate of the BOC.<sup>5</sup>

It does not appear that this is an issue of concern in Iowa. Qwest's SGAT has always indicated that Qwest resells its advanced services, not an affiliate. Further, the SGAT has always indicated that "any Telecommunications Service" offered to Qwest's retail customers is available for resale.

ASCENT's request that Qwest must demonstrate that it actually provides advanced services for resale seems to have been adequately addressed. Qwest's response shows that it currently resells advanced services, tracks provisioning and repair data, and works to provide the resold services at parity with retail services.

To the extent that an issue is to be further evaluated in the Regional Oversight Committee (ROC) OSS test or some other proceeding, the Board will incorporate that evidence into its final recommendation to the Federal Communications Commission (FCC) as to whether Qwest has fully complied with a checklist requirement. To the extent that an issue requires performance of some duty or activity on Qwest's part,

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<sup>5</sup> For example, see Verizon Connecticut 271 Order at paragraph 28.

Qwest will need to demonstrate that it adequately performs as expected in order for the Board to make a positive recommendation to the FCC following an application filed by Qwest.

The Board notes that as this process winds down to a point where Qwest will make its actual application with the FCC, a flurry of filings appears to be the norm. In order for the Board to finally conclude its review and examination of Qwest's compliance, it appears to be appropriate to set strict deadlines for the filing of comments and requests for reconsideration of a Board conditional statement, as well as any additional filings that may be made.

### **SUMMARY**

The Board rejects the request of ASCENT, noting that its concerns have been adequately addressed and indicates at this time that Qwest has conditionally satisfied checklist item 14: Resale. This conditional statement indicating these requirements are satisfied is subject to the same limitations noted earlier in this statement related to other proceedings and processes.

### **ORDERING CLAUSE**

#### **IT IS THEREFORE ORDERED:**

Any comments or requests for reconsideration of this conditional statement should be filed no later than close of business on the third business day following its issuance. Additionally, any responses to filings previously made in this docket must be filed no later than close of business on the third business day following the

issuance of this statement. Further, any responses to all future filings and Board orders or statements in this docket must be filed no later than close of business on the third business day following the filing or issuance.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 28<sup>th</sup> day of May, 2002.